

1 **TITLE III—INSURANCE**
2 **Subtitle A—State Regulation of**
3 **Insurance**

4 **SEC. 301. STATE REGULATION OF THE BUSINESS OF INSUR-**
5 **ANCE.**

6 The Act entitled “An Act to express the intent of the
7 Congress with reference to the regulation of the business
8 of insurance” and approved March 9, 1945 (15 U.S.C.
9 1011 et seq.), commonly referred to as the “McCarran-
10 Ferguson Act” remains the law of the United States.

11 **SEC. 302. MANDATORY INSURANCE LICENSING REQUIRE-**
12 **MENTS.**

13 No person shall provide insurance in a State as prin-
14 cipal or agent unless such person is licensed as required
15 by the appropriate insurance regulator of such State in
16 accordance with the relevant State insurance law, subject
17 to section 104.

18 **SEC. 303. FUNCTIONAL REGULATION OF INSURANCE.**

19 The insurance activities of any person (including a
20 national bank exercising its power to act as agent under
21 the 11th undesignated paragraph of section 13 of the Fed-
22 eral Reserve Act) shall be functionally regulated by the
23 States, subject to section 104.

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1 **SEC. 304. INSURANCE UNDERWRITING IN NATIONAL**
2 **BANKS.**

3 (a) IN GENERAL.—Except as provided in section 305,
4 a national bank and the subsidiaries of a national bank
5 may not provide insurance in a State as principal except
6 that this prohibition shall not apply to authorized prod-
7 ucts.

8 (b) AUTHORIZED PRODUCTS.—For the purposes of
9 this section, a product is authorized if—

10 (1) as of January 1, 1999, the Comptroller of
11 the Currency had determined in writing that na-
12 tional banks may provide such product as principal,
13 or national banks were in fact lawfully providing
14 such product as principal;

15 (2) no court of relevant jurisdiction had, by
16 final judgment, overturned a determination of the
17 Comptroller of the Currency that national banks
18 may provide such product as principal; and

19 (3) the product is not title insurance, or an an-
20 nuity contract the income of which is subject to tax
21 treatment under section 72 of the Internal Revenue
22 Code of 1986.

23 (c) DEFINITION.—For purposes of this section, the
24 term “insurance” means—

25 (1) any product regulated as insurance as of
26 January 1, 1999, in accordance with the relevant

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1 State insurance law, in the State in which the prod-
2 uct is provided;

3 (2) any product first offered after January 1,
4 1999, which—

5 (A) a State insurance regulator determines
6 shall be regulated as insurance in the State in
7 which the product is provided because the prod-
8 uct insures, guarantees, or indemnifies against
9 liability, loss of life, loss of health, or loss
10 through damage to or destruction of property,
11 including, but not limited to, surety bonds, life
12 insurance, health insurance, title insurance, and
13 property and casualty insurance (such as pri-
14 vate passenger or commercial automobile,
15 homeowners, mortgage, commercial multiperil,
16 general liability, professional liability, workers'
17 compensation, fire and allied lines, farm owners
18 multiperil, aircraft, fidelity, surety, medical
19 malpractice, ocean marine, inland marine, and
20 boiler and machinery insurance); and

21 (B) is not a product or service of a bank
22 that is—

23 (i) a deposit product;

24 (ii) a loan, discount, letter of credit,
25 or other extension of credit;

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1 (iii) a trust or other fiduciary service;

2 (iv) a qualified financial contract (as
3 defined in or determined pursuant to sec-
4 tion 11(e)(8)(D)(i) of the Federal Deposit
5 Insurance Act); or

6 (v) a financial guaranty, except that
7 this subparagraph (B) shall not apply to a
8 product that includes an insurance compo-
9 nent such that if the product is offered or
10 proposed to be offered by the bank as
11 principal—

12 (I) it would be treated as a life
13 insurance contract under section 7702
14 of the Internal Revenue Code of 1986;
15 or

16 (II) in the event that the product
17 is not a letter of credit or other simi-
18 lar extension of credit, a qualified fi-
19 nancial contract, or a financial guar-
20 anty, it would qualify for treatment
21 for losses incurred with respect to
22 such product under section 832(b)(5)
23 of the Internal Revenue Code of 1986,
24 if the bank were subject to tax as an

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1 insurance company under section 831
2 of that Code; or

3 (3) any annuity contract, the income on which
4 is subject to tax treatment under section 72 of the
5 Internal Revenue Code of 1986.

6 **SEC. 305. TITLE INSURANCE ACTIVITIES OF NATIONAL**
7 **BANKS AND THEIR AFFILIATES.**

8 (a) GENERAL PROHIBITION.—No national bank, and
9 no subsidiary of a national bank, may engage in any activ-
10 ity involving the underwriting or sale of title insurance.

11 (b) NONDISCRIMINATION PARITY EXCEPTION.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law (including section 104 of this Act),
14 in the case of any State in which banks organized
15 under the laws of such State are authorized to sell
16 title insurance as agency, a national bank and a sub-
17 sidiary of a national bank may sell title insurance as
18 agent in such State, but only in the same manner,
19 to the same extent, and under the same restrictions
20 as such State banks are authorized to sell title in-
21 surance as agent in such State.

22 (2) COORDINATION WITH “WILDCARD” PROVI-
23 SION.—A State law which authorizes State banks to
24 engage in any activities in such State in which a na-
25 tional bank may engage shall not be treated as a

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1 statute which authorizes State banks to sell title in-
2 surance as agent, for purposes of paragraph (1).

3 (c) GRANDFATHERING WITH CONSISTENT REG-
4 ULATION.—

5 (1) IN GENERAL.—Except as provided in para-
6 graphs (2) and (3) and notwithstanding subsections
7 (a) and (b), a national bank, and a subsidiary of a
8 national bank, may conduct title insurance activities
9 which such national bank or subsidiary was actively
10 and lawfully conducting before the date of the enact-
11 ment of this Act.

12 (2) INSURANCE AFFILIATE.—In the case of a
13 national bank which has an affiliate which provides
14 insurance as principal and is not a subsidiary of the
15 bank, the national bank and any subsidiary of the
16 national bank may not engage in the underwriting of
17 title insurance pursuant to paragraph (1).

18 (3) INSURANCE SUBSIDIARY.—In the case of a
19 national bank which has a subsidiary which provides
20 insurance as principal and has no affiliate other
21 than a subsidiary which provides insurance as prin-
22 cipal, the national bank may not directly engage in
23 any activity involving the underwriting of title insur-
24 ance.

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1 (d) “AFFILIATE” AND “SUBSIDIARY” DEFINED.—

2 For purposes of this section, the terms “affiliate” and
3 “subsidiary” have the same meanings as in section 2 of
4 the Bank Holding Company Act of 1956.

5 **SEC. 306. EXPEDITED AND EQUALIZED DISPUTE RESOLU-**
6 **TION FOR FEDERAL REGULATORS.**

7 (a) FILING IN COURT OF APPEALS.—In the case of
8 a regulatory conflict between a State insurance regulator
9 and a Federal regulator as to whether any product is or
10 is not insurance, as defined in section 304(c) of this Act,
11 or whether a State statute, regulation, order, or interpre-
12 tation regarding any insurance sales or solicitation activity
13 is properly treated as preempted under Federal law, either
14 regulator may seek expedited judicial review of such deter-
15 mination by the United States Court of Appeals for the
16 circuit in which the State is located or in the United
17 States Court of Appeals for the District of Columbia Cir-
18 cuit by filing a petition for review in such court.

19 (b) EXPEDITED REVIEW.—The United States Court
20 of Appeals in which a petition for review is filed in accord-
21 ance with subsection (a) shall complete all action on such
22 petition, including rendering a judgment, before the end
23 of the 60-day period beginning on the date on which such
24 petition is filed, unless all parties to such proceeding agree
25 to any extension of such period.

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1 (c) SUPREME COURT REVIEW.—Any request for cer-
2 tiorari to the Supreme Court of the United States of any
3 judgment of a United States Court of Appeals with respect
4 to a petition for review under this section shall be filed
5 with the Supreme Court of the United States as soon as
6 practicable after such judgment is issued.

7 (d) STATUTE OF LIMITATION.—No action may be
8 filed under this section challenging an order, ruling, deter-
9 mination, or other action of a Federal regulator or State
10 insurance regulator after the later of—

11 (1) the end of the 12-month period beginning
12 on the date on which the first public notice is made
13 of such order, ruling, determination or other action
14 in its final form; or

15 (2) the end of the 6-month period beginning on
16 the date on which such order, ruling, determination,
17 or other action takes effect.

18 (e) STANDARD OF REVIEW.—The court shall decide
19 an action filed under this section based on its review on
20 the merits of all questions presented under State and Fed-
21 eral law, including the nature of the product or activity
22 and the history and purpose of its regulation under State
23 and Federal law, without unequal deference.

24 (f) LIMITATION.—

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1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), subsection (e) shall not apply to any ac-
3 tion involving the consideration of any State statute,
4 regulation, order, interpretation, or other action re-
5 garding insurance sales, solicitation, or cross mar-
6 keting activities described in section 104(b)(2)(A)
7 that was adopted, issued, enacted, or taken before
8 January 1, 1999, but only to the extent that such
9 action presents an issue with regard to—

10 (A) impeding affiliations between persons
11 licensed to sell insurance and insured depository
12 institutions by requiring that all shareholders of
13 a licensee be licensed persons even if such per-
14 sons do not engage in any activities that would
15 otherwise require licensure, or by imposing any
16 similar licensure requirement;

17 (B) limiting the volume or portion of in-
18 surance sales made by an agent on the basis of
19 whether such sales are made to customers of af-
20 filiates of the agent; or

21 (C) requiring any office from which insur-
22 ance is sold, or any office of an entity affiliated
23 or otherwise associated with such insurance
24 sales office, must be located in such State.

25 (2) EXCEPTIONS TO THE LIMITATION.—

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1 (A) IN GENERAL.—Paragraph (1) shall not
2 apply with respect to any State statute, regula-
3 tion, order, interpretation, or other action de-
4 scribed in section 104(b)(2)(B).

5 (B) RESIDENT INSURANCE AGENT RE-
6 QUIREMENTS.—Subparagraph (C) of paragraph
7 (1) shall not apply with respect to any resident
8 insurance agent requirement that applies equal-
9 ly to all sellers of insurance in the State.

10 **SEC. 307. CONSUMER PROTECTION REGULATIONS.**

11 (a) REGULATIONS REQUIRED.—

12 (1) IN GENERAL.—The Federal Deposit Insur-
13 ance Act (12 U.S.C. 1811 et seq.) is amended by
14 adding at the end the following new section:

15 **“SEC. 45. CONSUMER PROTECTION REGULATIONS.**

16 **“(a) REGULATIONS REQUIRED.—**

17 **“(1) IN GENERAL.—**The Federal banking agen-
18 cies shall prescribe and publish in final form, before
19 the end of the 1-year period beginning on the date
20 of the enactment of this Act, consumer protection
21 regulations (which the agencies jointly determine to
22 be appropriate) that—

23 **“(A) apply to retail sales practices, solici-**
24 **tations, advertising, or offers of any insurance**
25 **product by any insured depository institution or**

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1 wholesale financial institution or any person
2 who is engaged in such activities at an office of
3 the institution or on behalf of the institution;
4 and

5 “(B) are consistent with the requirements
6 of this Act and provide such additional protec-
7 tions for consumers to whom such sales, solici-
8 tations, advertising, or offers are directed as
9 the agency determines to be appropriate.

10 “(2) APPLICABILITY TO SUBSIDIARIES.—The
11 regulations prescribed pursuant to paragraph (1)
12 shall extend such protections to any subsidiaries of
13 an insured depository institution, as deemed appro-
14 priate by the regulators referred to in paragraph (3),
15 where such extension is determined to be necessary
16 to ensure the consumer protections provided by this
17 section.

18 “(3) CONSULTATION AND JOINT REGULA-
19 TIONS.—The Federal banking agencies shall consult
20 with each other and prescribe joint regulations pur-
21 suant to paragraph (1), after consultation with the
22 State insurance regulators, as appropriate.

23 “(b) SALES PRACTICES.—The regulations prescribed
24 pursuant to subsection (a) shall include anticoercion rules
25 applicable to the sale of insurance products which prohibit

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1 an insured depository institution from engaging in any
2 practice that would lead a consumer to believe an exten-
3 sion of credit, in violation of section 106(b) of the Bank
4 Holding Company Act Amendments of 1970, is condi-
5 tional upon—

6 “(1) the purchase of an insurance product from
7 the institution or any of its affiliates or subsidiaries;
8 or

9 “(2) an agreement by the consumer not to ob-
10 tain, or a prohibition on the consumer from obtain-
11 ing, an insurance product from an unaffiliated enti-
12 ty.

13 “(c) DISCLOSURES AND ADVERTISING.—The regula-
14 tions prescribed pursuant to subsection (a) shall include
15 the following provisions relating to disclosures and adver-
16 tising in connection with the initial purchase of an insur-
17 ance product:

18 “(1) DISCLOSURES.—

19 “(A) IN GENERAL.—Requirements that the
20 following disclosures be made orally and in writ-
21 ing before the completion of the initial sale and,
22 in the case of clause (iv), at the time of applica-
23 tion for an extension of credit:

24 “(i) UNINSURED STATUS.—As appro-
25 priate, the product is not insured by the

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1 Federal Deposit Insurance Corporation,
2 the United States Government, or the in-
3 sured depository institution.

4 “(ii) INVESTMENT RISK.—In the case
5 of a variable annuity or other insurance
6 product which involves an investment risk,
7 that there is an investment risk associated
8 with the product, including possible loss of
9 value.

10 “(iv) COERCION.—The approval of an
11 extension of credit may not be conditioned
12 on—

13 “(I) the purchase of an insurance
14 product from the institution in which
15 the application for credit is pending or
16 any of its affiliates or subsidiaries; or

17 “(II) an agreement by the con-
18 sumer not to obtain, or a prohibition
19 on the consumer from obtaining, an
20 insurance product from an unaffili-
21 ated entity.

22 “(B) MAKING DISCLOSURE READILY UN-
23 DERSTANDABLE.—Regulations prescribed under
24 subparagraph (A) shall encourage the use of
25 disclosure that is conspicuous, simple, direct,

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1 and readily understandable, such as the fol-
2 lowing:

3 “(i) ‘NOT FDIC-INSURED’.

4 “(ii) ‘NOT GUARANTEED BY THE
5 BANK’.

6 “(iii) ‘MAY GO DOWN IN VALUE’.

7 “(iv) ‘NOT INSURED BY ANY
8 GOVERNMENT AGENCY’.

9 “(C) ADJUSTMENTS FOR ALTERNATIVE
10 METHODS OF PURCHASE.—In prescribing the
11 requirements under subparagraphs (A) and
12 (D), necessary adjustments shall be made for
13 purchase in person, by telephone, or by elec-
14 tronic media to provide for the most appro-
15 priate and complete form of disclosure and ac-
16 knowledgments.

17 “(D) CONSUMER ACKNOWLEDGMENT.—A
18 requirement that an insured depository institu-
19 tion shall require any person selling an insur-
20 ance product at any office of, or on behalf of,
21 the institution to obtain, at the time a con-
22 sumer receives the disclosures required under
23 this paragraph or at the time of the initial pur-
24 chase by the consumer of such product, an ac-
25 knowledgment by such consumer of the receipt

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1 of the disclosure required under this subsection
2 with respect to such product.

3 “(2) PROHIBITION ON MISREPRESENTA-
4 TIONS.—A prohibition on any practice, or any adver-
5 tising, at any office of, or on behalf of, the insured
6 depository institution, or any subsidiary as appro-
7 priate, which could mislead any person or otherwise
8 cause a reasonable person to reach an erroneous be-
9 lief with respect to—

10 “(A) the uninsured nature of any insur-
11 ance product sold, or offered for sale, by the in-
12 stitution or any subsidiary of the institution; or

13 “(B) in the case of a variable annuity or
14 other insurance product that involves an invest-
15 ment risk, the investment risk associated with
16 any such product.

17 “(d) SEPARATION OF BANKING AND NONBANKING
18 ACTIVITIES.—

19 “(1) REGULATIONS REQUIRED.—The regula-
20 tions prescribed pursuant to subsection (a) shall in-
21 clude such provisions as the Federal banking agen-
22 cies consider appropriate to ensure that the routine
23 acceptance of deposits and the making of loans is
24 kept, to the extent practicable, physically segregated
25 from insurance product activity.

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1 “(2) REQUIREMENTS.—Regulations prescribed
2 pursuant to paragraph (1) shall include the fol-
3 lowing:

4 “(A) SEPARATE SETTING.—A clear delin-
5 eation of the setting in which, and the cir-
6 cumstances under which, transactions involving
7 insurance products should be conducted in a lo-
8 cation physically segregated from an area where
9 retail deposits are routinely accepted or loans
10 are made.

11 “(B) REFERRALS.—Standards which per-
12 mit any person accepting deposits from, or
13 making loans to, the public in an area where
14 such transactions are routinely conducted in an
15 insured depository institution to refer a cus-
16 tomer who seeks to purchase any insurance
17 product to a qualified person who sells such
18 product, only if the person making the referral
19 receives no more than a one-time nominal fee of
20 a fixed dollar amount for each referral that
21 does not depend on whether the referral results
22 in a transaction.

23 “(C) QUALIFICATION AND LICENSING RE-
24 QUIREMENTS.—Standards prohibiting any in-
25 sured depository institution from permitting

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1 any person to sell or offer for sale any insur-
2 ance product in any part of any office of the in-
3 stitution, or on behalf of the institution, unless
4 such person is appropriately qualified and li-
5 censed.

6 “(e) DOMESTIC VIOLENCE DISCRIMINATION PROHI-
7 BITION.—

8 “(1) IN GENERAL.—In the case of an applicant
9 for, or an insured under, any insurance product de-
10 scribed in paragraph (2), the status of the applicant
11 or insured as a victim of domestic violence, or as a
12 provider of services to victims of domestic violence,
13 shall not be considered as a criterion in any decision
14 with regard to insurance underwriting, pricing, re-
15 newal, or scope of coverage of insurance policies, or
16 payment of insurance claims, except as required or
17 expressly permitted under State law.

18 “(2) SCOPE OF APPLICATION.—The prohibition
19 contained in paragraph (1) shall apply to any insur-
20 ance product which is sold or offered for sale, as
21 principal, agent, or broker, by any insured deposi-
22 tory institution or any person who is engaged in
23 such activities at an office of the institution or on
24 behalf of the institution.

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1 “(3) SENSE OF THE CONGRESS.—It is the sense
2 of the Congress that, by the end of the 30-month pe-
3 riod beginning on the date of the enactment of this
4 Act, the States should enact prohibitions against dis-
5 crimination with respect to insurance products that
6 are at least as strict as the prohibitions contained in
7 paragraph (1).

8 “(4) DOMESTIC VIOLENCE DEFINED.—For pur-
9 poses of this subsection, the term ‘domestic violence’
10 means the occurrence of 1 or more of the following
11 acts by a current or former family member, house-
12 hold member, intimate partner, or caretaker:

13 “(A) Attempting to cause or causing or
14 threatening another person physical harm, se-
15 vere emotional distress, psychological trauma,
16 rape, or sexual assault.

17 “(B) Engaging in a course of conduct or
18 repeatedly committing acts toward another per-
19 son, including following the person without
20 proper authority, under circumstances that
21 place the person in reasonable fear of bodily in-
22 jury or physical harm.

23 “(C) Subjecting another person to false
24 imprisonment.

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1 “(D) Attempting to cause or cause damage
2 to property so as to intimidate or attempt to
3 control the behavior of another person.

4 “(f) CONSUMER GRIEVANCE PROCESS.—The Federal
5 banking agencies shall jointly establish a consumer com-
6 plaint mechanism, for receiving and expeditiously address-
7 ing consumer complaints alleging a violation of regulations
8 issued under the section, which shall—

9 “(1) establish a group within each regulatory
10 agency to receive such complaints;

11 “(2) develop procedures for investigating such
12 complaints;

13 “(3) develop procedures for informing con-
14 sumers of rights they may have in connection with
15 such complaints; and

16 “(4) develop procedures for addressing concerns
17 raised by such complaints, as appropriate, including
18 procedures for the recovery of losses to the extent
19 appropriate.

20 “(g) EFFECT ON OTHER AUTHORITY.—

21 “(1) IN GENERAL.—No provision of this section
22 shall be construed as granting, limiting, or otherwise
23 affecting—

24 “(A) any authority of the Securities and
25 Exchange Commission, any self-regulatory or-

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1 ganization, the Municipal Securities Rule-
2 making Board, or the Secretary of the Treasury
3 under any Federal securities law; or

4 “(B) except as provided in paragraph (2),
5 any authority of any State insurance commis-
6 sioner or other State authority under any State
7 law.

8 “(2) COORDINATION WITH STATE LAW.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), regulations prescribed by a
11 Federal banking agency under this section shall
12 not apply to retail sales, solicitations, adver-
13 tising, or offers of any insurance product by
14 any insured depository institution or wholesale
15 financial institution or to any person who is en-
16 gaged in such activities at an office of such in-
17 stitution or on behalf of the institution, in a
18 State where the State has in effect statutes,
19 regulations, orders, or interpretations, that are
20 inconsistent with or contrary to the regulations
21 prescribed by the Federal banking agencies.

22 “(B) PREEMPTION.—If, with respect to
23 any provision of the regulations prescribed
24 under this section, the Board of Governors of
25 the Federal Reserve System, the Comptroller of

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1 the Currency, and the Board of Directors of the
2 Federal Deposit Insurance Corporation deter-
3 mine jointly that the protection afforded by
4 such provision for consumers is greater than
5 the protection provided by a comparable provi-
6 sion of the statutes, regulations, orders, or in-
7 terpretations referred to in subparagraph (A) of
8 any State, such provision of the regulations pre-
9 scribed under this section shall supersede the
10 comparable provision of such State statute, reg-
11 ulation, order, or interpretation.

12 “(h) INSURANCE PRODUCT DEFINED.—For purposes
13 of this section, the term ‘insurance product’ includes an
14 annuity contract the income of which is subject to tax
15 treatment under section 72 of the Internal Revenue Code
16 of 1986.”.

17 **SEC. 308. CERTAIN STATE AFFILIATION LAWS PREEMPTED**
18 **FOR INSURANCE COMPANIES AND AFFILI-**
19 **ATES.**

20 Except as provided in section 104(a)(2), no State
21 may, by law, regulation, order, interpretation, or
22 otherwise—

23 (1) prevent or significantly interfere with the
24 ability of any insurer, or any affiliate of an insurer
25 (whether such affiliate is organized as a stock com-

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1 pany, mutual holding company, or otherwise), to be-
2 come a financial holding company or to acquire con-
3 trol of an insured depository institution;

4 (2) limit the amount of an insurer's assets that
5 may be invested in the voting securities of an in-
6 sured depository institution (or any company which
7 controls such institution), except that the laws of an
8 insurer's State of domicile may limit the amount of
9 such investment to an amount that is not less than
10 5 percent of the insurer's admitted assets; or

11 (3) prevent, significantly interfere with, or have
12 the authority to review, approve, or disapprove a
13 plan of reorganization by which an insurer proposes
14 to reorganize from mutual form to become a stock
15 insurer (whether as a direct or indirect subsidiary of
16 a mutual holding company or otherwise) unless such
17 State is the State of domicile of the insurer.

18 **SEC. 309. INTERAGENCY CONSULTATION.**

19 (a) PURPOSE.—It is the intention of Congress that
20 the Board of Governors of the Federal Reserve System,
21 as the umbrella supervisor for financial holding compa-
22 nies, and the State insurance regulators, as the functional
23 regulators of companies engaged in insurance activities,
24 coordinate efforts to supervise companies that control both
25 a depository institution and a company engaged in insur-

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1 ance activities regulated under State law. In particular,
2 Congress believes that the Board and the State insurance
3 regulators should share, on a confidential basis, informa-
4 tion relevant to the supervision of companies that control
5 both a depository institution and a company engaged in
6 insurance activities, including information regarding the
7 financial health of the consolidated organization and infor-
8 mation regarding transactions and relationships between
9 insurance companies and affiliated depository institutions.
10 The appropriate Federal banking agencies for depository
11 institutions should also share, on a confidential basis, in-
12 formation with the relevant State insurance regulators re-
13 garding transactions and relationships between depository
14 institutions and affiliated companies engaged in insurance
15 activities. The purpose of this section is to encourage this
16 coordination and confidential sharing of information, and
17 to thereby improve both the efficiency and the quality of
18 the supervision of financial holding companies and their
19 affiliated depository institutions and companies engaged
20 in insurance activities.

21 (b) EXAMINATION RESULTS AND OTHER INFORMA-
22 TION.—

23 (1) INFORMATION OF THE BOARD.—Upon the
24 request of the appropriate insurance regulator of
25 any State, the Board may provide any information

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1 of the Board regarding the financial condition, risk
2 management policies, and operations of any financial
3 holding company that controls a company that is en-
4 gaged in insurance activities and is regulated by
5 such State insurance regulator, and regarding any
6 transaction or relationship between such an insur-
7 ance company and any affiliated depository institu-
8 tion. The Board may provide any other information
9 to the appropriate State insurance regulator that the
10 Board believes is necessary or appropriate to permit
11 the State insurance regulator to administer and en-
12 force applicable State insurance laws.

13 (2) BANKING AGENCY INFORMATION.—Upon
14 the request of the appropriate insurance regulator of
15 any State, the appropriate Federal banking agency
16 may provide any information of the agency regard-
17 ing any transaction or relationship between a deposi-
18 tory institution supervised by such Federal banking
19 agency and any affiliated company that is engaged
20 in insurance activities regulated by such State insur-
21 ance regulator. The appropriate Federal banking
22 agency may provide any other information to the ap-
23 propriate State insurance regulator that the agency
24 believes is necessary or appropriate to permit the

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1 State insurance regulator to administer and enforce
2 applicable State insurance laws.

3 (3) STATE INSURANCE REGULATOR INFORMA-
4 TION.—Upon the request of the Board or the appro-
5 priate Federal banking agency, a State insurance
6 regulator may provide any examination or other re-
7 ports, records, or other information to which such
8 insurance regulator may have access with respect to
9 a company which—

10 (A) is engaged in insurance activities and
11 regulated by such insurance regulator; and

12 (B) is an affiliate of an insured depository
13 institution, wholesale financial institution, or fi-
14 nancial holding company.

15 (c) CONSULTATION.—Before making any determina-
16 tion relating to the initial affiliation of, or the continuing
17 affiliation of, an insured depository institution, wholesale
18 financial institution, or financial holding company with a
19 company engaged in insurance activities, the appropriate
20 Federal banking agency shall consult with the appropriate
21 State insurance regulator of such company and take the
22 views of such insurance regulator into account in making
23 such determination.

24 (d) EFFECT ON OTHER AUTHORITY.—Nothing in
25 this section shall limit in any respect the authority of the

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1 appropriate Federal banking agency with respect to an in-
2 sured depository institution, wholesale financial institu-
3 tion, or bank holding company or any affiliate thereof
4 under any provision of law.

5 (e) CONFIDENTIALITY AND PRIVILEGE.—

6 (1) CONFIDENTIALITY.—The appropriate Fed-
7 eral banking agency shall not provide any informa-
8 tion or material that is entitled to confidential treat-
9 ment under applicable Federal banking agency regu-
10 lations, or other applicable law, to a State insurance
11 regulator unless such regulator agrees to maintain
12 the information or material in confidence and to
13 take all reasonable steps to oppose any effort to se-
14 cure disclosure of the information or material by the
15 regulator. The appropriate Federal banking agency
16 shall treat as confidential any information or mate-
17 rial obtained from a State insurance regulator that
18 is entitled to confidential treatment under applicable
19 State regulations, or other applicable law, and take
20 all reasonable steps to oppose any effort to secure
21 disclosure of the information or material by the Fed-
22 eral banking agency.

23 (2) PRIVILEGE.—The provision pursuant to this
24 section of information or material by a Federal
25 banking agency or State insurance regulator shall

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1 not constitute a waiver of, or otherwise affect, any
2 privilege to which the information or material is oth-
3 erwise subject.

4 (f) DEFINITIONS.—For purposes of this section, the
5 following definitions shall apply:

6 (1) APPROPRIATE FEDERAL BANKING AGENCY;
7 INSURED DEPOSITORY INSTITUTION.—The terms
8 “appropriate Federal banking agency” and “insured
9 depository institution” have the same meanings as
10 in section 3 of the Federal Deposit Insurance Act.

11 (2) BOARD; FINANCIAL HOLDING COMPANY;
12 AND WHOLESALE FINANCIAL INSTITUTION.—The
13 terms “Board”, “financial holding company”, and
14 “wholesale financial institution” have the same
15 meanings as in section 2 of the Bank Holding Com-
16 pany Act of 1956.

17 **SEC. 310. DEFINITION OF STATE.**

18 For purposes of this subtitle, the term “State” means
19 any State of the United States, the District of Columbia,
20 any territory of the United States, Puerto Rico, Guam,
21 American Samoa, the Trust Territory of the Pacific Is-
22 lands, the Virgin Islands, and the Northern Mariana Is-
23 lands.

1 **Subtitle B—Redomestication of**
2 **Mutual Insurers**

3 **SEC. 311. GENERAL APPLICATION.**

4 This subtitle shall only apply to a mutual insurance
5 company in a State which has not enacted a law which
6 expressly establishes reasonable terms and conditions for
7 a mutual insurance company domiciled in such State to
8 reorganize into a mutual holding company.

9 **SEC. 312. REDOMESTICATION OF MUTUAL INSURERS.**

10 (a) REDOMESTICATION.—A mutual insurer organized
11 under the laws of any State may transfer its domicile to
12 a transferee domicile as a step in a reorganization in
13 which, pursuant to the laws of the transferee domicile and
14 consistent with the standards in subsection (f), the mutual
15 insurer becomes a stock insurer that is a direct or indirect
16 subsidiary of a mutual holding company.

17 (b) RESULTING DOMICILE.—Upon complying with
18 the applicable law of the transferee domicile governing
19 transfers of domicile and completion of a transfer pursu-
20 ant to this section, the mutual insurer shall cease to be
21 a domestic insurer in the transferor domicile and, as a
22 continuation of its corporate existence, shall be a domestic
23 insurer of the transferee domicile.

24 (c) LICENSES PRESERVED.—The certificate of au-
25 thority, agents' appointments and licenses, rates, approv-

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1 als and other items that a licensed State allows and that
2 are in existence immediately prior to the date that a re-
3 domesticating insurer transfers its domicile pursuant to
4 this subtitle shall continue in full force and effect upon
5 transfer, if the insurer remains duly qualified to transact
6 the business of insurance in such licensed State.

7 (d) EFFECTIVENESS OF OUTSTANDING POLICIES
8 AND CONTRACTS.—

9 (1) IN GENERAL.—All outstanding insurance
10 policies and annuities contracts of a redomesticating
11 insurer shall remain in full force and effect and need
12 not be endorsed as to the new domicile of the in-
13 surer, unless so ordered by the State insurance regu-
14 lator of a licensed State, and then only in the case
15 of outstanding policies and contracts whose owners
16 reside in such licensed State.

17 (2) FORMS.—

18 (A) Applicable State law may require a re-
19 domesticating insurer to file new policy forms
20 with the State insurance regulator of a licensed
21 State on or before the effective date of the
22 transfer.

23 (B) Notwithstanding subparagraph (A), a
24 redomesticating insurer may use existing policy
25 forms with appropriate endorsements to reflect

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1 the new domicile of the redomesticating insurer
2 until the new policy forms are approved for use
3 by the State insurance regulator of such li-
4 censed State.

5 (e) NOTICE.—A redomesticating insurer shall give
6 notice of the proposed transfer to the State insurance reg-
7 ulator of each licensed State and shall file promptly any
8 resulting amendments to corporate documents required to
9 be filed by a foreign licensed mutual insurer with the in-
10 surance regulator of each such licensed State.

11 (f) PROCEDURAL REQUIREMENTS.—No mutual in-
12 surer may redomesticate to another State and reorganize
13 into a mutual holding company pursuant to this section
14 unless the State insurance regulator of the transferee
15 domicile determines that the plan of reorganization of the
16 insurer includes the following requirements:

17 (1) APPROVAL BY BOARD OF DIRECTORS AND
18 POLICYHOLDERS.—The reorganization is approved
19 by at least a majority of the board of directors of
20 the mutual insurer and at least a majority of the
21 policyholders who vote after notice, disclosure of the
22 reorganization and the effects of the transaction on
23 policyholder contractual rights, and reasonable op-
24 portunity to vote, in accordance with such notice,
25 disclosure, and voting procedures as are approved by

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1 the State insurance regulator of the transferee domi-
2 cile.

3 (2) CONTINUED VOTING CONTROL BY POLICY-
4 HOLDERS; REVIEW OF PUBLIC STOCK OFFERING.—
5 After the consummation of a reorganization, the pol-
6 icyholders of the reorganized insurer shall have the
7 same voting rights with respect to the mutual hold-
8 ing company as they had before the reorganization
9 with respect to the mutual insurer. With respect to
10 an initial public offering of stock, the offering shall
11 be conducted in compliance with applicable securities
12 laws and in a manner approved by the State insur-
13 ance regulator of the transferee domicile.

14 (3) AWARD OF STOCK OR GRANT OF OPTIONS
15 TO OFFICERS AND DIRECTORS.—For a period of 6
16 months after completion of an initial public offering,
17 neither a stock holding company nor the converted
18 insurer shall award any stock options or stock
19 grants to persons who are elected officers or direc-
20 tors of the mutual holding company, the stock hold-
21 ing company, or the converted insurer, except with
22 respect to any such awards or options to which a
23 person is entitled as a policyholder and as approved
24 by the State insurance regulator of the transferee
25 domicile.

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1 (4) CONTRACTUAL RIGHTS.—Upon reorganiza-
2 tion into a mutual holding company, the contractual
3 rights of the policyholders are preserved.

4 (5) FAIR AND EQUITABLE TREATMENT OF POL-
5 ICYHOLDERS.—The reorganization is approved as
6 fair and equitable to the policyholders by the insur-
7 ance regulator of the transferee domicile.

8 **SEC. 313. EFFECT ON STATE LAWS RESTRICTING REDOMES-**
9 **TICATION.**

10 (a) IN GENERAL.—Unless otherwise permitted by
11 this subtitle, State laws of any transferor domicile that
12 conflict with the purposes and intent of this subtitle are
13 preempted, including but not limited to—

14 (1) any law that has the purpose or effect of
15 impeding the activities of, taking any action against,
16 or applying any provision of law or regulation to,
17 any insurer or an affiliate of such insurer because
18 that insurer or any affiliate plans to redomesticate,
19 or has redomesticated, pursuant to this subtitle;

20 (2) any law that has the purpose or effect of
21 impeding the activities of, taking action against, or
22 applying any provision of law or regulation to, any
23 insured or any insurance licensee or other inter-
24 mediary because such person has procured insurance
25 from or placed insurance with any insurer or affil-

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1 iate of such insurer that plans to redomesticate, or
2 has redomesticated, pursuant to this subtitle, but
3 only to the extent that such law would treat such in-
4 sured licensee or other intermediary differently than
5 if the person procured insurance from, or placed in-
6 surance with, an insured licensee or other inter-
7 mediary which had not redomesticated;

8 (3) any law that has the purpose or effect of
9 terminating, because of the redomestication of a mu-
10 tual insurer pursuant to this subtitle, any certificate
11 of authority, agent appointment or license, rate ap-
12 proval, or other approval, of any State insurance
13 regulator or other State authority in existence imme-
14 diately prior to the redomestication in any State
15 other than the transferee domicile.

16 (b) DIFFERENTIAL TREATMENT PROHIBITED.—No
17 State law, regulation, interpretation, or functional equiva-
18 lent thereof, of a State other than a transferee domicile
19 may treat a redomesticating or redomesticated insurer or
20 any affiliate thereof any differently than an insurer oper-
21 ating in that State that is not a redomesticating or re-
22 domesticated insurer.

23 (c) LAWS PROHIBITING OPERATIONS.—If any li-
24 censed State fails to issue, delays the issuance of, or seeks
25 to revoke an original or renewal certificate of authority

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1 of a redomesticated insurer immediately following re-
2 domestication, except on grounds and in a manner con-
3 sistent with its past practices regarding the issuance of
4 certificates of authority to foreign insurers that are not
5 redomesticating, then the redomesticating insurer shall be
6 exempt from any State law of the licensed State to the
7 extent that such State law or the operation of such State
8 law would make unlawful, or regulate, directly or indi-
9 rectly, the operation of the redomesticated insurer, except
10 that such licensed State may require the redomesticated
11 insurer to—

12 (1) comply with the unfair claim settlement
13 practices law of the licensed State;

14 (2) pay, on a nondiscriminatory basis, applica-
15 ble premium and other taxes which are levied on li-
16 censed insurers or policyholders under the laws of
17 the licensed State;

18 (3) register with and designate the State insur-
19 ance regulator as its agent solely for the purpose of
20 receiving service of legal documents or process;

21 (4) submit to an examination by the State in-
22 surance regulator in any licensed state in which the
23 redomesticated insurer is doing business to deter-
24 mine the insurer's financial condition, if—

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1 (A) the State insurance regulator of the
2 transferee domicile has not begun an examina-
3 tion of the redomesticated insurer and has not
4 scheduled such an examination to begin before
5 the end of the 1-year period beginning on the
6 date of the redomestication; and

7 (B) any such examination is coordinated to
8 avoid unjustified duplication and repetition;

9 (5) comply with a lawful order issued in—

10 (A) a delinquency proceeding commenced
11 by the State insurance regulator of any licensed
12 State if there has been a judicial finding of fi-
13 nancial impairment under paragraph (7); or

14 (B) a voluntary dissolution proceeding;

15 (6) comply with any State law regarding decep-
16 tive, false, or fraudulent acts or practices, except
17 that if the licensed State seeks an injunction regard-
18 ing the conduct described in this paragraph, such in-
19 junction must be obtained from a court of competent
20 jurisdiction as provided in section 314(a);

21 (7) comply with an injunction issued by a court
22 of competent jurisdiction, upon a petition by the
23 State insurance regulator alleging that the redomes-
24 ticating insurer is in hazardous financial condition
25 or is financially impaired;

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1 (8) participate in any insurance insolvency
2 guaranty association on the same basis as any other
3 insurer licensed in the licensed State; and

4 (9) require a person acting, or offering to act,
5 as an insurance licensee for a redomesticated insurer
6 in the licensed State to obtain a license from that
7 State, except that such State may not impose any
8 qualification or requirement that discriminates
9 against a nonresident insurance licensee.

10 **SEC. 314. OTHER PROVISIONS.**

11 (a) JUDICIAL REVIEW.—The appropriate United
12 States district court shall have exclusive jurisdiction over
13 litigation arising under this section involving any redomes-
14 ticating or redomesticated insurer.

15 (b) SEVERABILITY.—If any provision of this section,
16 or the application thereof to any person or circumstances,
17 is held invalid, the remainder of the section, and the appli-
18 cation of such provision to other persons or circumstances,
19 shall not be affected thereby.

20 **SEC. 315. DEFINITIONS.**

21 For purposes of this subtitle, the following definitions
22 shall apply:

23 (1) COURT OF COMPETENT JURISDICTION.—

24 The term “court of competent jurisdiction” means a

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1 court authorized pursuant to section 314(a) to adju-
2 dicate litigation arising under this subtitle.

3 (2) DOMICILE.—The term “domicile” means
4 the State in which an insurer is incorporated, char-
5 tered, or organized.

6 (3) INSURANCE LICENSEE.—The term “insur-
7 ance licensee” means any person holding a license
8 under State law to act as insurance agent, subagent,
9 broker, or consultant.

10 (4) INSTITUTION.—The term “institution”
11 means a corporation, joint stock company, limited li-
12 ability company, limited liability partnership, asso-
13 ciation, trust, partnership, or any similar entity.

14 (5) LICENSED STATE.—The term “licensed
15 State” means any State, the District of Columbia,
16 American Samoa, Guam, Puerto Rico, or the United
17 States Virgin Islands in which the redomesticating
18 insurer has a certificate of authority in effect imme-
19 diately prior to the redomestication.

20 (6) MUTUAL INSURER.—The term “mutual in-
21 surer” means a mutual insurer organized under the
22 laws of any State.

23 (7) PERSON.—The term “person” means an in-
24 dividual, institution, government or governmental
25 agency, State or political subdivision of a State, pub-

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1 lic corporation, board, association, estate, trustee, or
2 fiduciary, or other similar entity.

3 (8) POLICYHOLDER.—The term “policyholder”
4 means the owner of a policy issued by a mutual in-
5 surer, except that, with respect to voting rights, the
6 term means a member of a mutual insurer or mu-
7 tual holding company granted the right to vote, as
8 determined under applicable State law.

9 (9) REDOMESTICATED INSURER.—The term
10 “redomesticated insurer” means a mutual insurer
11 that has redomesticated pursuant to this subtitle.

12 (10) REDOMESTICATING INSURER.—The term
13 “redomesticating insurer” means a mutual insurer
14 that is redomesticating pursuant to this subtitle.

15 (11) REDOMESTICATION OR TRANSFER.—The
16 terms “redomestication” and “transfer” mean the
17 transfer of the domicile of a mutual insurer from
18 one State to another State pursuant to this subtitle.

19 (12) STATE INSURANCE REGULATOR.—The
20 term “State insurance regulator” means the prin-
21 cipal insurance regulatory authority of a State, the
22 District of Columbia, American Samoa, Guam,
23 Puerto Rico, or the United States Virgin Islands.

24 (13) STATE LAW.—The term “State law”
25 means the statutes of any State, the District of Co-

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1 lumbia, American Samoa, Guam, Puerto Rico, or the
2 United States Virgin Islands and any regulation,
3 order, or requirement prescribed pursuant to any
4 such statute.

5 (14) TRANSFEREE DOMICILE.—The term
6 “transferee domicile” means the State to which a
7 mutual insurer is redomesticating pursuant to this
8 subtitle.

9 (15) TRANSFEROR DOMICILE.—The term
10 “transferor domicile” means the State from which a
11 mutual insurer is redomesticating pursuant to this
12 subtitle.

13 **SEC. 316. EFFECTIVE DATE.**

14 This subtitle shall take effect on the date of the en-
15 actment of this Act.

16 **Subtitle C—National Association of**
17 **Registered Agents and Brokers**

18 **SEC. 321. STATE FLEXIBILITY IN MULTISTATE LICENSING**

19 **REFORMS.**

20 (a) IN GENERAL.—The provisions of this subtitle
21 shall take effect unless, not later than 3 years after the
22 date of enactment of this Act, at least a majority of the
23 States—

24 (1) have enacted uniform laws and regulations
25 governing the licensure of individuals and entities

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1 authorized to sell and solicit the purchase of insur-
2 ance within the State; or

3 (2) have enacted reciprocity laws and regula-
4 tions governing the licensure of nonresident individ-
5 uals and entities authorized to sell and solicit insur-
6 ance within those States.

7 (b) UNIFORMITY REQUIRED.—States shall be deemed
8 to have established the uniformity necessary to satisfy
9 subsection (a)(1) if the States—

10 (1) establish uniform criteria regarding the in-
11 tegrity, personal qualifications, education, training,
12 and experience of licensed insurance producers, in-
13 cluding the qualification and training of sales per-
14 sonnel in ascertaining the appropriateness of a par-
15 ticular insurance product for a prospective customer;

16 (2) establish uniform continuing education re-
17 quirements for licensed insurance producers;

18 (3) establish uniform ethics course require-
19 ments for licensed insurance producers in conjunc-
20 tion with the continuing education requirements
21 under paragraph (2);

22 (4) establish uniform criteria to ensure that an
23 insurance product, including any annuity contract,
24 sold to a consumer is suitable and appropriate for

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1 the consumer based on financial information dis-
2 closed by the consumer; and

3 (5) do not impose any requirement upon any in-
4 surance producer to be licensed or otherwise quali-
5 fied to do business as a nonresident that has the ef-
6 fect of limiting or conditioning that producer's ac-
7 tivities because of its residence or place of oper-
8 ations, except that counter-signature requirements
9 imposed on nonresident producers shall not be
10 deemed to have the effect of limiting or conditioning
11 a producer's activities because of its residence or
12 place of operations under this section.

13 (c) RECIPROCITY REQUIRED.—States shall be
14 deemed to have established the reciprocity required to sat-
15 isfy subsection (a)(2) if the following conditions are met:

16 (1) ADMINISTRATIVE LICENSING PROCE-
17 DURES.—At least a majority of the States permit a
18 producer that has a resident license for selling or so-
19 liciting the purchase of insurance in its home State
20 to receive a license to sell or solicit the purchase of
21 insurance in such majority of States as a non-
22 resident to the same extent that such producer is
23 permitted to sell or solicit the purchase of insurance
24 in its State, if the producer's home State also
25 awards such licenses on such a reciprocal basis,

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1 without satisfying any additional requirements other
2 than submitting—

3 (A) a request for licensure;

4 (B) the application for licensure that the
5 producer submitted to its home State;

6 (C) proof that the producer is licensed and
7 in good standing in its home State; and

8 (D) the payment of any requisite fee to the
9 appropriate authority.

10 (2) CONTINUING EDUCATION REQUIRE-
11 MENTS.—A majority of the States accept an insur-
12 ance producer's satisfaction of its home State's con-
13 tinuing education requirements for licensed insur-
14 ance producers to satisfy the States' own continuing
15 education requirements if the producer's home State
16 also recognizes the satisfaction of continuing edu-
17 cation requirements on such a reciprocal basis.

18 (3) NO LIMITING NONRESIDENT REQUIRE-
19 MENTS.—A majority of the States do not impose
20 any requirement upon any insurance producer to be
21 licensed or otherwise qualified to do business as a
22 nonresident that has the effect of limiting or condi-
23 tioning that producer's activities because of its resi-
24 dence or place of operations, except that
25 countersignature requirements imposed on non-

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1 resident producers shall not be deemed to have the
2 effect of limiting or conditioning a producer's activi-
3 ties because of its residence or place of operations
4 under this section.

5 (4) RECIPROCAL RECIPROCITY.—Each of the
6 States that satisfies paragraphs (1), (2), and (3)
7 grants reciprocity to residents of all of the other
8 States that satisfy such paragraphs.

9 (d) DETERMINATION.—

10 (1) NAIC DETERMINATION.—At the end of the
11 3-year period beginning on the date of the enact-
12 ment of this Act, the National Association of Insur-
13 ance Commissioners shall determine, in consultation
14 with the insurance commissioners or chief insurance
15 regulatory officials of the States, whether the uni-
16 formity or reciprocity required by subsections (b)
17 and (c) has been achieved.

18 (2) JUDICIAL REVIEW.—The appropriate
19 United States district court shall have exclusive ju-
20 risdiction over any challenge to the National Asso-
21 ciation of Insurance Commissioners' determination
22 under this section and such court shall apply the
23 standards set forth in section 706 of title 5, United
24 States Code, when reviewing any such challenge.

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1 (e) CONTINUED APPLICATION.—If, at any time, the
2 uniformity or reciprocity required by subsections (b) and
3 (c) no longer exists, the provisions of this subtitle shall
4 take effect 2 years after the date on which such uniformity
5 or reciprocity ceases to exist, unless the uniformity or reci-
6 procity required by those provisions is satisfied before the
7 expiration of that 2-year period.

8 (f) SAVINGS PROVISION.—No provision of this sec-
9 tion shall be construed as requiring that any law, regula-
10 tion, provision, or action of any State which purports to
11 regulate insurance producers, including any such law, reg-
12 ulation, provision, or action which purports to regulate un-
13 fair trade practices or establish consumer protections, in-
14 cluding countersignature laws, be altered or amended in
15 order to satisfy the uniformity or reciprocity required by
16 subsections (b) and (c), unless any such law, regulation,
17 provision, or action is inconsistent with a specific require-
18 ment of any such subsection and then only to the extent
19 of such inconsistency.

20 (g) UNIFORM LICENSING.—Nothing in this section
21 shall be construed to require any State to adopt new or
22 additional licensing requirements to achieve the uniformity
23 necessary to satisfy subsection (a)(1).

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1 **SEC. 322. NATIONAL ASSOCIATION OF REGISTERED**
2 **AGENTS AND BROKERS.**

3 (a) ESTABLISHMENT.—There is established the Na-
4 tional Association of Registered Agents and Brokers
5 (hereafter in this subtitle referred to as the “Associa-
6 tion”).

7 (b) STATUS.—The Association shall—

8 (1) be a nonprofit corporation;

9 (2) have succession until dissolved by an Act of
10 Congress;

11 (3) not be an agent or instrumentality of the
12 United States Government; and

13 (4) except as otherwise provided in this Act, be
14 subject to, and have all the powers conferred upon
15 a nonprofit corporation by the District of Columbia
16 Nonprofit Corporation Act (D.C. Code, sec. 29y-
17 1001 et seq.).

18 **SEC. 323. PURPOSE.**

19 The purpose of the Association shall be to provide
20 a mechanism through which uniform licensing, appoint-
21 ment, continuing education, and other insurance producer
22 sales qualification requirements and conditions can be
23 adopted and applied on a multistate basis, while pre-
24 serving the right of States to license, supervise, and dis-
25 cipline insurance producers and to prescribe and enforce

1 laws and regulations with regard to insurance-related con-
2 sumer protection and unfair trade practices.

3 **SEC. 324. RELATIONSHIP TO THE FEDERAL GOVERNMENT.**

4 The Association shall be subject to the supervision
5 and oversight of the National Association of Insurance
6 Commissioners (hereafter in this subtitle referred to as the
7 “NAIC”).

8 **SEC. 325. MEMBERSHIP.**

9 (a) ELIGIBILITY.—

10 (1) IN GENERAL.—Any State-licensed insurance
11 producer shall be eligible to become a member in the
12 Association.

13 (2) INELIGIBILITY FOR SUSPENSION OR REV-
14 OCATION OF LICENSE.—Notwithstanding paragraph
15 (1), a State-licensed insurance producer shall not be
16 eligible to become a member if a State insurance
17 regulator has suspended or revoked such producer’s
18 license in that State during the 3-year period pre-
19 ceding the date on which such producer applies for
20 membership.

21 (3) RESUMPTION OF ELIGIBILITY.—Paragraph
22 (2) shall cease to apply to any insurance producer
23 if—

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1 (A) the State insurance regulator renews
2 the license of such producer in the State in
3 which the license was suspended or revoked; or

4 (B) the suspension or revocation is subse-
5 quently overturned.

6 (b) AUTHORITY TO ESTABLISH MEMBERSHIP CRI-
7 TERIA.—The Association shall have the authority to estab-
8 lish membership criteria that—

9 (1) bear a reasonable relationship to the pur-
10 poses for which the Association was established; and

11 (2) do not unfairly limit the access of smaller
12 agencies to the Association membership.

13 (c) ESTABLISHMENT OF CLASSES AND CAT-
14 EGORIES.—

15 (1) CLASSES OF MEMBERSHIP.—The Associa-
16 tion may establish separate classes of membership,
17 with separate criteria, if the Association reasonably
18 determines that performance of different duties re-
19 quires different levels of education, training, or expe-
20 rience.

21 (2) CATEGORIES.—The Association may estab-
22 lish separate categories of membership for individ-
23 uals and for other persons. The establishment of any
24 such categories of membership shall be based either
25 on the types of licensing categories that exist under

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1 State laws or on the aggregate amount of business
2 handled by an insurance producer. No special cat-
3 egories of membership, and no distinct membership
4 criteria, shall be established for members which are
5 insured depository institutions or wholesale financial
6 institutions or for their employees, agents, or affili-
7 ates.

8 (d) MEMBERSHIP CRITERIA.—

9 (1) IN GENERAL.—The Association may estab-
10 lish criteria for membership which shall include
11 standards for integrity, personal qualifications, edu-
12 cation, training, and experience.

13 (2) MINIMUM STANDARD.—In establishing cri-
14 teria under paragraph (1), the Association shall con-
15 sider the highest levels of insurance producer quali-
16 fications established under the licensing laws of the
17 States.

18 (e) EFFECT OF MEMBERSHIP.—Membership in the
19 Association shall entitle the member to licensure in each
20 State for which the member pays the requisite fees, includ-
21 ing licensing fees and, where applicable, bonding require-
22 ments, set by such State.

23 (f) ANNUAL RENEWAL.—Membership in the Associa-
24 tion shall be renewed on an annual basis.

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1 (g) CONTINUING EDUCATION.—The Association shall
2 establish, as a condition of membership, continuing edu-
3 cation requirements which shall be comparable to or great-
4 er than the continuing education requirements under the
5 licensing laws of a majority of the States.

6 (h) SUSPENSION AND REVOCATION.—The Associa-
7 tion may—

8 (1) inspect and examine the records and offices
9 of the members of the Association to determine com-
10 pliance with the criteria for membership established
11 by the Association; and

12 (2) suspend or revoke the membership of an in-
13 surance producer if—

14 (A) the producer fails to meet the applica-
15 ble membership criteria of the Association; or

16 (B) the producer has been subject to dis-
17 ciplinary action pursuant to a final adjudicatory
18 proceeding under the jurisdiction of a State in-
19 surance regulator, and the Association con-
20 cludes that retention of membership in the As-
21 sociation would not be in the public interest.

22 (i) OFFICE OF CONSUMER COMPLAINTS.—

23 (1) IN GENERAL.—The Association shall estab-
24 lish an office of consumer complaints that shall—

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1 (A) receive and investigate complaints
2 from both consumers and State insurance regu-
3 lators related to members of the Association;
4 and

5 (B) recommend to the Association any dis-
6 ciplinary actions that the office considers appro-
7 priate, to the extent that any such rec-
8 ommendation is not inconsistent with State law.

9 (2) RECORDS AND REFERRALS.—The office of
10 consumer complaints of the Association shall—

11 (A) maintain records of all complaints re-
12 ceived in accordance with paragraph (1) and
13 make such records available to the NAIC and
14 to each State insurance regulator for the State
15 of residence of the consumer who filed the com-
16 plaint; and

17 (B) refer, when appropriate, any such com-
18 plaint to any appropriate State insurance regu-
19 lator.

20 (3) TELEPHONE AND OTHER ACCESS.—The of-
21 fice of consumer complaints shall maintain a toll-free
22 telephone number for the purpose of this subsection
23 and, as practicable, other alternative means of com-
24 munication with consumers, such as an Internet
25 home page.

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1 **SEC. 326. BOARD OF DIRECTORS.**

2 (a) ESTABLISHMENT.—There is established the
3 board of directors of the Association (hereafter in this sub-
4 title referred to as the “Board”) for the purpose of gov-
5 erning and supervising the activities of the Association
6 and the members of the Association.

7 (b) POWERS.—The Board shall have such powers and
8 authority as may be specified in the bylaws of the Associa-
9 tion.

10 (c) COMPOSITION.—

11 (1) MEMBERS.—The Board shall be composed
12 of 7 members appointed by the NAIC.

13 (2) REQUIREMENT.—At least 4 of the members
14 of the Board shall have significant experience with
15 the regulation of commercial lines of insurance in at
16 least 1 of the 20 States in which the greatest total
17 dollar amount of commercial-lines insurance is
18 placed in the United States.

19 (3) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—If, by the end of the 2-
21 year period beginning on the date of enactment
22 of this Act, the NAIC has not appointed the
23 initial 7 members of the Board of the Associa-
24 tion, the initial Board shall consist of the 7
25 State insurance regulators of the 7 States with
26 the greatest total dollar amount of commercial-

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1 lines insurance in place as of the end of such
2 period.

3 (B) ALTERNATE COMPOSITION.—If any of
4 the State insurance regulators described in sub-
5 paragraph (A) declines to serve on the Board,
6 the State insurance regulator with the next
7 greatest total dollar amount of commercial-lines
8 insurance in place, as determined by the NAIC
9 as of the end of such period, shall serve as a
10 member of the Board.

11 (C) INOPERABILITY.—If fewer than 7
12 State insurance regulators accept appointment
13 to the Board, the Association shall be estab-
14 lished without NAIC oversight pursuant to sec-
15 tion 332.

16 (d) TERMS.—The term of each director shall, after
17 the initial appointment of the members of the Board, be
18 for 3 years, with $\frac{1}{3}$ of the directors to be appointed each
19 year.

20 (e) BOARD VACANCIES.—A vacancy on the Board
21 shall be filled in the same manner as the original appoint-
22 ment of the initial Board for the remainder of the term
23 of the vacating member.

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1 (f) MEETINGS.—The Board shall meet at the call of
2 the chairperson, or as otherwise provided by the bylaws
3 of the Association.

4 **SEC. 327. OFFICERS.**

5 (a) IN GENERAL.—

6 (1) POSITIONS.—The officers of the Association
7 shall consist of a chairperson and a vice chairperson
8 of the Board, a president, secretary, and treasurer
9 of the Association, and such other officers and as-
10 sistant officers as may be deemed necessary.

11 (2) MANNER OF SELECTION.—Each officer of
12 the Board and the Association shall be elected or ap-
13 pointed at such time and in such manner and for
14 such terms not exceeding 3 years as may be pre-
15 scribed in the bylaws of the Association.

16 (b) CRITERIA FOR CHAIRPERSON.—Only individuals
17 who are members of the NAIC shall be eligible to serve
18 as the chairperson of the board of directors.

19 **SEC. 328. BYLAWS, RULES, AND DISCIPLINARY ACTION.**

20 (a) ADOPTION AND AMENDMENT OF BYLAWS.—

21 (1) COPY REQUIRED TO BE FILED WITH THE
22 NAIC.—The board of directors of the Association
23 shall file with the NAIC a copy of the proposed by-
24 laws or any proposed amendment to the bylaws, ac-

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1 accompanied by a concise general statement of the
2 basis and purpose of such proposal.

3 (2) EFFECTIVE DATE.—Except as provided in
4 paragraph (3), any proposed bylaw or proposed
5 amendment shall take effect—

6 (A) 30 days after the date of the filing of
7 a copy with the NAIC;

8 (B) upon such later date as the Associa-
9 tion may designate; or

10 (C) upon such earlier date as the NAIC
11 may determine.

12 (3) DISAPPROVAL BY THE NAIC.—Notwith-
13 standing paragraph (2), a proposed bylaw or amend-
14 ment shall not take effect if, after public notice and
15 opportunity to participate in a public hearing—

16 (A) the NAIC disapproves such proposal as
17 being contrary to the public interest or contrary
18 to the purposes of this subtitle and provides no-
19 tice to the Association setting forth the reasons
20 for such disapproval; or

21 (B) the NAIC finds that such proposal in-
22 volves a matter of such significant public inter-
23 est that public comment should be obtained, in
24 which case it may, after notifying the Associa-
25 tion in writing of such finding, require that the

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1 procedures set forth in subsection (b) be fol-
2 lowed with respect to such proposal, in the
3 same manner as if such proposed bylaw change
4 were a proposed rule change within the mean-
5 ing of such subsection.

6 (b) ADOPTION AND AMENDMENT OF RULES.—

7 (1) FILING PROPOSED REGULATIONS WITH THE
8 NAIC.—

9 (A) IN GENERAL.—The board of directors
10 of the Association shall file with the NAIC a
11 copy of any proposed rule or any proposed
12 amendment to a rule of the Association which
13 shall be accompanied by a concise general state-
14 ment of the basis and purpose of such proposal.

15 (B) OTHER RULES AND AMENDMENTS IN-
16 EFFECTIVE.—No proposed rule or amendment
17 shall take effect unless approved by the NAIC
18 or otherwise permitted in accordance with this
19 paragraph.

20 (2) INITIAL CONSIDERATION BY THE NAIC.—

21 Not later than 35 days after the date of publication
22 of notice of filing of a proposal, or before the end
23 of such longer period not to exceed 90 days as the
24 NAIC may designate after such date, if the NAIC
25 finds such longer period to be appropriate and sets

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1 forth its reasons for so finding, or as to which the
2 Association consents, the NAIC shall—

3 (A) by order approve such proposed rule or
4 amendment; or

5 (B) institute proceedings to determine
6 whether such proposed rule or amendment
7 should be modified or disapproved.

8 (3) NAIC PROCEEDINGS.—

9 (A) IN GENERAL.—Proceedings instituted
10 by the NAIC with respect to a proposed rule or
11 amendment pursuant to paragraph (2) shall—

12 (i) include notice of the grounds for
13 disapproval under consideration;

14 (ii) provide opportunity for hearing;
15 and

16 (iii) be concluded not later than 180
17 days after the date of the Association's fil-
18 ing of such proposed rule or amendment.

19 (B) DISPOSITION OF PROPOSAL.—At the
20 conclusion of any proceeding under subpara-
21 graph (A), the NAIC shall, by order, approve or
22 disapprove the proposed rule or amendment.

23 (C) EXTENSION OF TIME FOR CONSIDER-
24 ATION.—The NAIC may extend the time for

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1 concluding any proceeding under subparagraph

2 (A) for—

3 (i) not more than 60 days if the

4 NAIC finds good cause for such extension

5 and sets forth its reasons for so finding; or

6 (ii) for such longer period as to which

7 the Association consents.

8 (4) STANDARDS FOR REVIEW.—

9 (A) GROUNDS FOR APPROVAL.—The NAIC
10 shall approve a proposed rule or amendment if
11 the NAIC finds that the rule or amendment is
12 in the public interest and is consistent with the
13 purposes of this Act.

14 (B) APPROVAL BEFORE END OF NOTICE
15 PERIOD.—The NAIC shall not approve any pro-
16 posed rule before the end of the 30-day period
17 beginning on the date on which the Association
18 files proposed rules or amendments in accord-
19 ance with paragraph (1), unless the NAIC finds
20 good cause for so doing and sets forth the rea-
21 sons for so finding.

22 (5) ALTERNATE PROCEDURE.—

23 (A) IN GENERAL.—Notwithstanding any
24 provision of this subsection other than subpara-
25 graph (B), a proposed rule or amendment relat-

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1 ing to the administration or organization of the
2 Association shall take effect—

3 (i) upon the date of filing with the
4 NAIC, if such proposed rule or amendment
5 is designated by the Association as relating
6 solely to matters which the NAIC, con-
7 sistent with the public interest and the
8 purposes of this subsection, determines by
9 rule do not require the procedures set forth
10 in this paragraph; or

11 (ii) upon such date as the NAIC shall
12 for good cause determine.

13 (B) ABROGATION BY THE NAIC.—

14 (i) IN GENERAL.—At any time within
15 60 days after the date of filing of any pro-
16 posed rule or amendment under subpara-
17 graph (A)(i) or clause (ii) of this subpara-
18 graph, the NAIC may repeal such rule or
19 amendment and require that the rule or
20 amendment be refiled and reviewed in ac-
21 cordance with this paragraph, if the NAIC
22 finds that such action is necessary or ap-
23 propriate in the public interest, for the
24 protection of insurance producers or policy-

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1 holders, or otherwise in furtherance of the
2 purposes of this subtitle.

3 (ii) EFFECT OF RECONSIDERATION BY
4 THE NAIC.—Any action of the NAIC pur-
5 suant to clause (i) shall—

6 (I) not affect the validity or force
7 of a rule change during the period
8 such rule or amendment was in effect;
9 and

10 (II) not be considered to be a
11 final action.

12 (c) ACTION REQUIRED BY THE NAIC.—The NAIC
13 may, in accordance with such rules as the NAIC deter-
14 mines to be necessary or appropriate to the public interest
15 or to carry out the purposes of this subtitle, require the
16 Association to adopt, amend, or repeal any bylaw, rule or
17 amendment of the Association, whenever adopted.

18 (d) DISCIPLINARY ACTION BY THE ASSOCIATION.—

19 (1) SPECIFICATION OF CHARGES.—In any pro-
20 ceeding to determine whether membership shall be
21 denied, suspended, revoked, or not renewed (here-
22 after in this section referred to as a “disciplinary ac-
23 tion”), the Association shall bring specific charges,
24 notify such member of such charges, give the mem-

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1 ber an opportunity to defend against the charges,
2 and keep a record.

3 (2) SUPPORTING STATEMENT.—A determina-
4 tion to take disciplinary action shall be supported by
5 a statement setting forth—

6 (A) any act or practice in which such
7 member has been found to have been engaged;

8 (B) the specific provision of this subtitle,
9 the rules or regulations under this subtitle, or
10 the rules of the Association which any such act
11 or practice is deemed to violate; and

12 (C) the sanction imposed and the reason
13 for such sanction.

14 (e) NAIC REVIEW OF DISCIPLINARY ACTION.—

15 (1) NOTICE TO THE NAIC.—If the Association
16 orders any disciplinary action, the Association shall
17 promptly notify the NAIC of such action.

18 (2) REVIEW BY THE NAIC.—Any disciplinary
19 action taken by the Association shall be subject to
20 review by the NAIC—

21 (A) on the NAIC's own motion; or

22 (B) upon application by any person ag-
23 grieved by such action if such application is
24 filed with the NAIC not more than 30 days
25 after the later of—

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1 (i) the date the notice was filed with
2 the NAIC pursuant to paragraph (1); or
3 (ii) the date the notice of the discipli-
4 nary action was received by such aggrieved
5 person.

6 (f) EFFECT OF REVIEW.—The filing of an applica-
7 tion to the NAIC for review of a disciplinary action, or
8 the institution of review by the NAIC on the NAIC's own
9 motion, shall not operate as a stay of disciplinary action
10 unless the NAIC otherwise orders.

11 (g) SCOPE OF REVIEW.—

12 (1) IN GENERAL.—In any proceeding to review
13 such action, after notice and the opportunity for
14 hearing, the NAIC shall—

15 (A) determine whether the action should be
16 taken;

17 (B) affirm, modify, or rescind the discipli-
18 nary sanction; or

19 (C) remand to the Association for further
20 proceedings.

21 (2) DISMISSAL OF REVIEW.—The NAIC may
22 dismiss a proceeding to review disciplinary action if
23 the NAIC finds that—

24 (A) the specific grounds on which the ac-
25 tion is based exist in fact;

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1 (B) the action is in accordance with appli-
2 cable rules and regulations; and

3 (C) such rules and regulations are, and
4 were, applied in a manner consistent with the
5 purposes of this subtitle.

6 **SEC. 329. ASSESSMENTS.**

7 (a) INSURANCE PRODUCERS SUBJECT TO ASSESS-
8 MENT.—The Association may establish such application
9 and membership fees as the Association finds necessary
10 to cover the costs of its operations, including fees made
11 reimbursable to the NAIC under subsection (b), except
12 that, in setting such fees, the Association may not dis-
13 criminate against smaller insurance producers.

14 (b) NAIC ASSESSMENTS.—The NAIC may assess the
15 Association for any costs that the NAIC incurs under this
16 subtitle.

17 **SEC. 330. FUNCTIONS OF THE NAIC.**

18 (a) ADMINISTRATIVE PROCEDURE.—Determinations
19 of the NAIC, for purposes of making rules pursuant to
20 section 328, shall be made after appropriate notice and
21 opportunity for a hearing and for submission of views of
22 interested persons.

23 (b) EXAMINATIONS AND REPORTS.—

24 (1) EXAMINATIONS.—The NAIC may make
25 such examinations and inspections of the Association

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1 and require the Association to furnish to the NAIC
2 such reports and records or copies thereof as the
3 NAIC may consider necessary or appropriate in the
4 public interest or to effectuate the purposes of this
5 subtitle.

6 (2) REPORT BY ASSOCIATION.—As soon as
7 practicable after the close of each fiscal year, the As-
8 sociation shall submit to the NAIC a written report
9 regarding the conduct of its business, and the exer-
10 cise of the other rights and powers granted by this
11 subtitle, during such fiscal year. Such report shall
12 include financial statements setting forth the finan-
13 cial position of the Association at the end of such
14 fiscal year and the results of its operations (includ-
15 ing the source and application of its funds) for such
16 fiscal year. The NAIC shall transmit such report to
17 the President and the Congress with such comment
18 thereon as the NAIC determines to be appropriate.

19 **SEC. 331. LIABILITY OF THE ASSOCIATION AND THE DIREC-**
20 **TORS, OFFICERS, AND EMPLOYEES OF THE**
21 **ASSOCIATION.**

22 (a) IN GENERAL.—The Association shall not be
23 deemed to be an insurer or insurance producer within the
24 meaning of any State law, rule, regulation, or order regu-
25 lating or taxing insurers, insurance producers, or other en-

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1 titles engaged in the business of insurance, including pro-
2 visions imposing premium taxes, regulating insurer sol-
3 vency or financial condition, establishing guaranty funds
4 and levying assessments, or requiring claims settlement
5 practices.

6 (b) LIABILITY OF THE ASSOCIATION, ITS DIREC-
7 TORS, OFFICERS, AND EMPLOYEES.—Neither the Associa-
8 tion nor any of its directors, officers, or employees shall
9 have any liability to any person for any action taken or
10 omitted in good faith under or in connection with any mat-
11 ter subject to this subtitle.

12 **SEC. 332. ELIMINATION OF NAIC OVERSIGHT.**

13 (a) IN GENERAL.—The Association shall be estab-
14 lished without NAIC oversight and the provisions set forth
15 in section 324, subsections (a), (b), (c), and (e) of section
16 328, and sections 329(b) and 330 of this subtitle shall
17 cease to be effective if, at the end of the 2-year period
18 beginning on the date on which the provisions of this sub-
19 title take effect pursuant to section 321—

20 (1) at least a majority of the States rep-
21 resenting at least 50 percent of the total United
22 States commercial-lines insurance premiums have
23 not satisfied the uniformity or reciprocity require-
24 ments of subsections (a), (b), and (c) of section 321;
25 and

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1 (2) the NAIC has not approved the Associa-
2 tion's bylaws as required by section 328 or is unable
3 to operate or supervise the Association, or the Asso-
4 ciation is not conducting its activities as required
5 under this Act.

6 (b) BOARD APPOINTMENTS.—If the repeals required
7 by subsection (a) are implemented, the following shall
8 apply:

9 (1) GENERAL APPOINTMENT POWER.—The
10 President, with the advice and consent of the Sen-
11 ate, shall appoint the members of the Association's
12 Board established under section 326 from lists of
13 candidates recommended to the President by the
14 National Association of Insurance Commissioners.

15 (2) PROCEDURES FOR OBTAINING NATIONAL
16 ASSOCIATION OF INSURANCE COMMISSIONERS AP-
17 POINTMENT RECOMMENDATIONS.—

18 (A) INITIAL DETERMINATION AND REC-
19 ommendations.—After the date on which the
20 provisions of subsection (a) take effect, the
21 NAIC shall, not later than 60 days thereafter,
22 provide a list of recommended candidates to the
23 President. If the NAIC fails to provide a list by
24 that date, or if any list that is provided does
25 not include at least 14 recommended candidates

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1 or comply with the requirements of section
2 326(c), the President shall, with the advice and
3 consent of the Senate, make the requisite ap-
4 pointments without considering the views of the
5 NAIC.

6 (B) SUBSEQUENT APPOINTMENTS.—After
7 the initial appointments, the NAIC shall pro-
8 vide a list of at least 6 recommended candidates
9 for the Board to the President by January 15
10 of each subsequent year. If the NAIC fails to
11 provide a list by that date, or if any list that
12 is provided does not include at least 6 rec-
13 ommended candidates or comply with the re-
14 quirements of section 326(c), the President,
15 with the advice and consent of the Senate, shall
16 make the requisite appointments without con-
17 sidering the views of the NAIC.

18 (C) PRESIDENTIAL OVERSIGHT.—

19 (i) REMOVAL.—If the President deter-
20 mines that the Association is not acting in
21 the interests of the public, the President
22 may remove the entire existing Board for
23 the remainder of the term to which the
24 members of the Board were appointed and
25 appoint, with the advice and consent of the

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1 Senate, new members to fill the vacancies
2 on the Board for the remainder of such
3 terms.

4 (ii) SUSPENSION OF RULES OR AC-
5 TIONS.—The President, or a person des-
6 ignated by the President for such purpose,
7 may suspend the effectiveness of any rule,
8 or prohibit any action, of the Association
9 which the President or the designee deter-
10 mines is contrary to the public interest.

11 (c) ANNUAL REPORT.—As soon as practicable after
12 the close of each fiscal year, the Association shall submit
13 to the President and to the Congress a written report rel-
14 ative to the conduct of its business, and the exercise of
15 the other rights and powers granted by this subtitle, dur-
16 ing such fiscal year. Such report shall include financial
17 statements setting forth the financial position of the Asso-
18 ciation at the end of such fiscal year and the results of
19 its operations (including the source and application of its
20 funds) for such fiscal year.

21 **SEC. 333. RELATIONSHIP TO STATE LAW.**

22 (a) PREEMPTION OF STATE LAWS.—State laws, reg-
23 ulations, provisions, or other actions purporting to regu-
24 late insurance producers shall be preempted as provided
25 in subsection (b).

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1 (b) PROHIBITED ACTIONS.—No State shall—

2 (1) impede the activities of, take any action
3 against, or apply any provision of law or regulation
4 to, any insurance producer because that insurance
5 producer or any affiliate plans to become, has ap-
6 plied to become, or is a member of the Association;

7 (2) impose any requirement upon a member of
8 the Association that it pay different fees to be li-
9 censed or otherwise qualified to do business in that
10 State, including bonding requirements, based on its
11 residency;

12 (3) impose any licensing, appointment, integ-
13 rity, personal or corporate qualifications, education,
14 training, experience, residency, or continuing edu-
15 cation requirement upon a member of the Associa-
16 tion that is different from the criteria for member-
17 ship in the Association or renewal of such member-
18 ship, except that counter-signature requirements im-
19 posed on nonresident producers shall not be deemed
20 to have the effect of limiting or conditioning a pro-
21 ducer's activities because of its residence or place of
22 operations under this section; or

23 (4) implement the procedures of such State's
24 system of licensing or renewing the licenses of insur-

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1 ance producers in a manner different from the au-
2 thority of the Association under section 325.

3 (c) SAVINGS PROVISION.—Except as provided in sub-
4 sections (a) and (b), no provision of this section shall be
5 construed as altering or affecting the continuing effective-
6 ness of any law, regulation, provision, or other action of
7 any State which purports to regulate insurance producers,
8 including any such law, regulation, provision, or action
9 which purports to regulate unfair trade practices or estab-
10 lish consumer protections, including countersignature
11 laws.

12 **SEC. 334. COORDINATION WITH OTHER REGULATORS.**

13 (a) COORDINATION WITH STATE INSURANCE REGU-
14 LATORS.—The Association shall have the authority to—

15 (1) issue uniform insurance producer applica-
16 tions and renewal applications that may be used to
17 apply for the issuance or removal of State licenses,
18 while preserving the ability of each State to impose
19 such conditions on the issuance or renewal of a li-
20 cense as are consistent with section 333;

21 (2) establish a central clearinghouse through
22 which members of the Association may apply for the
23 issuance or renewal of licenses in multiple States;
24 and

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1 (3) establish or utilize a national database for
2 the collection of regulatory information concerning
3 the activities of insurance producers.

4 (b) COORDINATION WITH THE NATIONAL ASSOCIA-
5 TION OF SECURITIES DEALERS.—The Association shall
6 coordinate with the National Association of Securities
7 Dealers in order to ease any administrative burdens that
8 fall on persons that are members of both associations, con-
9 sistent with the purposes of this subtitle and the Federal
10 securities laws.

11 **SEC. 335. JUDICIAL REVIEW.**

12 (a) JURISDICTION.—The appropriate United States
13 district court shall have exclusive jurisdiction over litiga-
14 tion involving the Association, including disputes between
15 the Association and its members that arise under this sub-
16 title. Suits brought in State court involving the Associa-
17 tion shall be deemed to have arisen under Federal law and
18 therefore be subject to jurisdiction in the appropriate
19 United States district court.

20 (b) EXHAUSTION OF REMEDIES.—An aggrieved per-
21 son shall be required to exhaust all available administra-
22 tive remedies before the Association and the NAIC before
23 it may seek judicial review of an Association decision.

24 (c) STANDARDS OF REVIEW.—The standards set
25 forth in section 553 of title 5, United States Code, shall

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1 be applied whenever a rule or bylaw of the Association is
2 under judicial review, and the standards set forth in sec-
3 tion 554 of title 5, United States Code, shall be applied
4 whenever a disciplinary action of the Association is judi-
5 cially reviewed.

6 **SEC. 336. DEFINITIONS.**

7 For purposes of this subtitle, the following definitions
8 shall apply:

9 (1) HOME STATE.—The term “home State”
10 means the State in which the insurance producer
11 maintains its principal place of residence and is li-
12 censed to act as an insurance producer.

13 (2) INSURANCE.—The term “insurance” means
14 any product, other than title insurance, defined or
15 regulated as insurance by the appropriate State in-
16 surance regulatory authority.

17 (3) INSURANCE PRODUCER.—The term “insur-
18 ance producer” means any insurance agent or
19 broker, surplus lines broker, insurance consultant,
20 limited insurance representative, and any other per-
21 son that solicits, negotiates, effects, procures, deliv-
22 ers, renews, continues or binds policies of insurance
23 or offers advice, counsel, opinions or services related
24 to insurance.

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1 (4) STATE.—The term “State” includes any
2 State, the District of Columbia, American Samoa,
3 Guam, Puerto Rico, and the United States Virgin
4 Islands.

5 (5) STATE LAW.—The term “State law” in-
6 cludes all laws, decisions, rules, regulations, or other
7 State action having the effect of law, of any State.
8 A law of the United States applicable only to the
9 District of Columbia shall be treated as a State law
10 rather than a law of the United States.

11 **Subtitle D—Rental Car Agency**
12 **Insurance Activities**

13 **SEC. 341. STANDARD OF REGULATION FOR MOTOR VEHI-**
14 **CLE RENTALS.**

15 (a) PROTECTION AGAINST RETROACTIVE APPLICA-
16 TION OF REGULATORY AND LEGAL ACTION.—Except as
17 provided in subsection (b), during the 3-year period begin-
18 ning on the date of the enactment of this Act, it shall
19 be a presumption that no State law imposes any licensing,
20 appointment, or education requirements on any person
21 who solicits the purchase of or sells insurance connected
22 with, and incidental to, the lease or rental of a motor vehi-
23 cle.

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1 (b) PREEMINENCE OF STATE INSURANCE LAW.—No
2 provision of this section shall be construed as altering the
3 validity, interpretation, construction, or effect of—

4 (1) any State statute;

5 (2) the prospective application of any court
6 judgment interpreting or applying any State statute;
7 or

8 (3) the prospective application of any final
9 State regulation, order, bulletin, or other statutorily
10 authorized interpretation or action,

11 which, by its specific terms, expressly regulates or exempts
12 from regulation any person who solicits the purchase of
13 or sells insurance connected with, and incidental to, the
14 short-term lease or rental of a motor vehicle.

15 (c) SCOPE OF APPLICATION.—This section shall
16 apply with respect to—

17 (1) the lease or rental of a motor vehicle for a
18 total period of 90 consecutive days or less; and

19 (2) insurance which is provided in connection
20 with, and incidentally to, such lease or rental for a
21 period of consecutive days not exceeding the lease or
22 rental period.

23 (d) MOTOR VEHICLE DEFINED.—For purposes of
24 this section, the term “motor vehicle” has the meaning

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- 1 given to such term in section 13102 of title 49, United
- 2 States Code.